Supreme Court, U. S.
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MICHAEL RODAK, JR., CLE

NO. 80-290

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

RICHARD FIORE,
Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF THE
COMMONWEALTH OF MASSACHUSETTS

BRIEF FOR RESPONDENT IN OPPOSITION.

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I.

ISSUES PRESENTED.

1. Was the police officer's warrantless entry into the cottage, after receiving information of a possible breaking and entry in the area and observing indications of a forced entry a reasonable search under the Fourth Amendment to the Constitution?

2. Was the police officer's subsequent observation of hashish within the "plain view" exception to the Fourth Amendment to the Constitution?

PARTIES.

The Commonwealth of Massachusetts and Richard Fiore are the sole parties to this action.

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BRIEF FOR RESPONDENT IN OPPOSITION.

Respondent accepts petitioner's citation of opinions below, statement of jurisdiction under 28 U.S.C. § 1257(3) (1976), statement of the constitutional provision involved, and the statement of the case.

REASONS FOR DENYING THE WRIT.

I. THERE IS NO SUBSTANTIAL CONFLICT BETWEEN THE MASSACHUSETTS APPEALS COURT AND OTHER STATE OR FEDERAL COURTS AS TO A POLICE OFFICER'S WARRANTLESS ENTRY INTO A BUILDING IN AN EMERGENCY.

The petitioner has not attempted to show any substantial conflict between the decision of the Massachusetts Appeals Court and other state or federal courts. Petitioner's failure to show any substantial conflict reflects the uniform position of state and federal courts that a police officer may properly enter a dwelling without a search warrant in response to an emergency situation. See cases collected in Mincey v. Arizona, 437 U.S. 385, 392 n.6 & 7 (1978); See generally LaFave, Search and Seizure, §6.6(b); Mascolo, The Emergency Doctrine Exception

to the Warrant Requirement Under the Fourth Amendment, 22 Buffalo L. Rev. 419 (1972); Note, The Emergency Doctrine, Civil Search and Seizure, and the Fourth Amendment, 43 Ford. L. Rev. 571, 584 n.102 (1975).

II. THE ISSUES PRESENTED ARE NEITHER NOVEL NOR SIGNIFICANT.

The Massachusetts Appeals Court determined that Trooper Cauley's entry was in response to the report of a house break in the area, and indications of a forced entry into the cottage. The court was emphatic in its conclusion, "[i]t seems clear to us that a house break without more -- as set out in the affidavit -- raises the possibility of danger to an occupant and of the continued presence of an intruder and indicates the need to secure the premises." Commonwealth v. Fiore,

Mass. App. Ct. Adv. Sh. (1980) 833, 835, 403 N.E.2d 953, 954-55 (1980).

The right of police officers to enter and investigate in an emergency without the accompanying intent to either search or arrest is inherent in their duties as peace officers. United States v. Barone, 330 F.2d 543, 545 (2d Cir. 1964), cert. denied, 377 U.S. 1004 (1964). In very similar circumstances, entry into a building after report of a burglary and indications of forced entry, the Sixth Circuit upheld a police officer's warrantless entry, United States v. Estese, 479 F.2d 1273 (6th Cir. 1973). See also, Zamper v. Dist. Ct., ____ Mont. ____ , 591 P.2d 656 (1979) (police entry after neighbor's report of burglary and finding door ajar); People v. Hardin, 54 Mich. App. 353, 220 N.W.2d 785 (1974) (police entry after neighbor reports lights

within house whose occupants are on vacation); People v. Parra, 30 Cal. App. 3d 729, 106 Cal. Rptr. 531 (4th Dist. 1973), cert. denied, 414 U.S. 1116 (1973) (police entry after discovering an open door to an unattended shop).

The general proposition that police officers may make a warrantless entry in an emergency was strongly presented by then Judge Burger concurring in Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963), cert. denied, 375 U.S. 860 (1963).

> [A] warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.

See, Mincey v. Arizona, 437 U.S. 385, 392-93, nn.6 & 7 (1978); Michigan v. Tyler, 436 U.S. 499, 509-10 (1978); Warden v. Hayden, 387 U.S. 294, 298-300 (1967).

III. PETITIONER'S ARGUMENT IS FUNDAMENTALLY A DISPUTE CONCERNING THE FACTUAL FINDINGS OF THE CASE.

On the motion to suppress the Superior Court determined that: (1) Trooper Cauley had no reason to believe that the cottage he entered was the one the informant had referred to; (2) upon finding a dwelling with the front door torn off and the inside door ajar, the trooper had a duty to investigate and secure the property; and, (3) it was reasonable for the trooper to think there was someone hiding in the dwelling or that someone might be injured. Commonwealth v. Fiore, Sup. Ct. No.

78-217-227, Ruling of Law #2. The petitioner contested these conclusions in the Appeals Court and lost. The Appeals Court agreed that "the trial judge could, as he did, believe Cauley's testimony that when he came upon the cottage from which the door had been torn, he did not know that this was the cottage to which [the] informant had referred." Commonwealth v. Fiore, Mass. App. Ct. Adv. Sh. (1980) 833, 836; 403 N.E.2d 953, 955 (1980). The Appeals Court also agreed that, "[i]n the circumstances the possibility that this was the cottage where narcotics might be found did not cancel out the alternate possibility that someone in the cottage was in need of help or that an intruder was in the dwelling." Commonwealth v. Fiore, Mass. App. Ct. Adv. Sh. (1980) 833, 837,

403 N.E.2d 953, 956 (1980). The Massachusetts Supreme Judicial Court declined further appellate review of the case. Commonwealth v. Fiore, Mass. Adv. Sh. (1980) 1549. The petitioner now, presents the same basically factual arguments concerning the intent of the trooper on entering the cottage.[1/] This Court should not grant certiorari to review the evidence and discuss once more the intent of the trooper on entering

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1/Petitioner argues, "Nor do the facts here support the Appeals Court's notion that there could have been persons in need of aid or intruders still in the cottage . . ." Petition For Writ of Certiorari, at 8, and "this is a case in which the police officers entered the premises not to investigate a breaking and entering and not, at least initially, to ascertain the owner of the premises, but with the intent to search for the contraband that had been reported to be present at a burglarized cottage in the vicinity." Petition For Writ of Certiorari, at 10.

the cottage. United States v. Johnston, 268 U.S. 220, 227 (1925) (J. Holmes).

IV. THE MASSACHUSETTS APPEALS COURT APPLIED THE APPROPRIATE ANALYSIS.

Once it is determined that the trooper's initial entry into the cottage was reasonable, the trooper's subsequent observation of hashish was within the plain view doctrine. Coolidge v. New Hampshire, 403 U.S. 443, 466 (1971). It is well settled that an object in plain view of an officer who lawfully is in a position to have that view is subject to seizure. Harris v. United States, 390 U.S. 234 (1968). Thus, the Massachusetts Appeals Court properly upheld the seizure of the hashish.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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